



House of Representatives

General Assembly

File No. 535

January Session, 2005

Substitute House Bill No. 6918

House of Representatives, April 26, 2005

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE INTEGRITY OF THE UNEMPLOYMENT COMPENSATION EXPERIENCE RATED TAX SYSTEM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) (a) For purposes of this
2 section:

3 (1) "Knowingly" means having actual knowledge of or acting with
4 deliberate ignorance of or reckless disregard for a prohibition or
5 requirement under this section;

6 (2) "Person" means an individual, corporation, limited liability
7 company, company, trust, estate, partnership or association;

8 (3) "Trade or business" includes an employer's employees; and

9 (4) "Violates or attempts to violate" includes, but is not limited to,
10 the evasion of or attempt to evade any provision of this section, or any

11 misrepresentation or wilful nondisclosure of information required to
12 be given under this section.

13 (b) No person who acquires the assets, organization, trade or
14 business of an employer solely or primarily for the purpose of
15 obtaining a lower contribution rate to the Unemployment
16 Compensation Fund shall acquire the unemployment experience of
17 such employer, and such acquisition shall be deemed a violation under
18 this subsection. If the administrator determines that a person has
19 acquired such assets solely or primarily for the purpose of obtaining a
20 lower contribution rate, the administrator shall require such person to
21 pay contributions at the rate provided in subsection (d) of section 31-
22 225a of the general statutes for an employer who has not been
23 chargeable with benefits for a sufficient period of time to have such
24 employer's rate otherwise computed under section 31-225a of the
25 general statutes or, where applicable, the person's charged tax rate, as
26 provided in subsection (e) of section 31-225a of the general statutes,
27 whichever is greater. In determining whether the assets, organization,
28 trade or business of an employer was acquired solely or primarily for
29 the purpose of obtaining a lower contribution rate, the factors the
30 administrator shall consider shall include, but not be limited to, the
31 cost of acquiring the business, whether the person continued the
32 business activity of the acquired business, how long the business was
33 continued and whether a substantial number of new employees were
34 hired for performance of duties unrelated to the business activity
35 conducted by the business prior to its acquisition.

36 (c) Notwithstanding any other provision of chapter 567 of the
37 general statutes relating to the transfer of unemployment experience, if
38 an employer transfers its assets, organization, trade or business, or a
39 portion of its assets, organization, trade or business, to another
40 employer with whom, at the time of such transfer, the transferring
41 employer shares substantially common ownership, management or
42 control, the unemployment experience of the transferring employer
43 shall be transferred to the receiving employer. The administrator shall
44 recalculate the contribution rates of both employers and make such

45 recalculated rates effective upon the date of the transfer. The
46 administrator may require from any employer, whether or not
47 otherwise subject to this chapter, any sworn or unsworn reports that
48 are necessary for the effective administration of this section.

49 (d) In addition to the penalty imposed pursuant to subsection (e) of
50 this section and any applicable penalties under chapter 567 of the
51 general statutes, if a person knowingly violates or attempts to violate
52 any provision of subsection (b) or (c) of this section, or any other
53 provision of chapter 567 of the general statutes relating to determining
54 the assignment of a contribution rate, or knowingly advises another
55 person in the violation of subsection (b) or (c) of this section, such
56 person shall be subject to the following penalties:

57 (1) If the person is an employer, such person shall be assigned a
58 penalty rate of contributions of two per cent of taxable wages for the
59 year during which such violation or attempted violation occurred and
60 for the following three years.

61 (2) If the person is not an employer, such person shall be subject to a
62 civil penalty of not less than five hundred dollars nor more than five
63 thousand dollars. Any such fine shall be deposited into the
64 Employment Security Special Administration Fund established under
65 subsection (d) of section 31-259 of the general statutes.

66 (e) Any person who violates this section shall be fined not more
67 than two thousand dollars or imprisoned not more than one year, or
68 both.

69 (f) The administrator shall adopt regulations, in accordance with the
70 provisions of chapter 54 of the general statutes, to establish procedures
71 and guidelines necessary to implement the provisions of this section,
72 including procedures to identify the transfer or acquisition of a
73 business for purposes of this section.

74 (g) This section shall be interpreted and applied in such a manner as
75 to meet the minimum requirements of Public Law 108-295 as

76 interpreted by the federal Department of Labor.

77 (h) This section shall apply to unemployment compensation tax
78 years beginning on and after January 1, 2006.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	New section

Statement of Legislative Commissioners:

In subsection (b), "otherwise" was inserted after "employer's rate" and "under section 31-225a" was substituted for "under such provision" for accuracy and clarity.

LAB *Joint Favorable Subst. C/R*

FIN

FIN *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Labor Dept.	Unemployment Compensation Fund - Revenue Gain	See Below	See Below
Labor Dept.	ESAF - Revenue Gain	Minimal	Minimal

Municipal Impact: None

Explanation

If the administrator of the Unemployment Compensation Fund determines that a person or business acquired another business for the sole purpose of obtaining a lower unemployment tax rate, the administrator shall require such persons to pay contributions at the rate that they should have paid for the entire period had they not purchased the new business. The number of instances is indeterminate at this time. The fund balance is close to \$500 million so even if the fund recoups \$1 million, on a percentage basis the impact is minimal.

An employer found to have violated the provisions of the bill shall be penalized at a rate of 2% of their taxable wages for the year in which the violation occurred and for the following three years. These instances are expected to be minimal and would be deposited into the Unemployment Compensation Fund.

If a person who is not an employer, but is an advisor to an employer, violates the provisions of the bill, he is subject to a civil penalty of between \$500 and \$5,000. These instances are expected to be minimal and would be deposited into the Employment Security Special Administration Fund.

OLR Bill Analysis**sHB 6918*****AN ACT CONCERNING THE INTEGRITY OF THE UNEMPLOYMENT
COMPENSATION EXPERIENCE RATED TAX SYSTEM*****SUMMARY:**

This bill prohibits a person or business that buys or acquires an employer solely or primarily to obtain its unemployment tax experience rating from getting that employer's lower unemployment tax rating. It also prohibits transferring employees or business from one employer to another employer under the same ownership or control to obtain a lower unemployment tax rate.

The bill establishes penalties for violations including fines, prison time, and an increase in the business' unemployment tax rate. Its penalties also apply to existing provisions of the unemployment compensation law regarding the determination of an employer's unemployment tax rate.

The bill states it must be interpreted to comply with the federal law requiring state unemployment compensation laws to prohibit merger, acquisition, restructuring, or workforce shifting that is intended to avoid unemployment taxes.

The bill requires the Department of Labor (DOL) to adopt regulations, in accordance with the Uniform Administrative Procedure Act, to carry out the bill's provisions. It applies to tax years beginning on or after January 1, 2006.

EFFECTIVE DATE: October 1, 2005

UNEMPLOYMENT TAX EXPERIENCE RATING

Under the experience rating system, an employer's unemployment tax rate is based largely on the amount of unemployment compensation paid to that employer's former employees. The more unemployment compensation paid to its former employees, the higher its

unemployment tax rate, up to a limit established by law. Employers with a history of no former employees obtaining benefits will have the lowest possible tax. DOL, which administers the unemployment compensation act, annually calculates the unemployment tax rate for each employer.

VIOLATIONS

The bill prohibits a person or business that buys or acquires the assets, organization, employees, trade, or business of an employer solely or primarily to obtain its unemployment tax experience rating from getting that employer's lower unemployment tax rating. The bill makes such an acquisition a violation of its provisions.

Under the bill, when employees, assets, organization, or businesses are transferred from one employer to another employer where both under common ownership, management, or control, the unemployment tax experience rating moves with the transfer to the receiving employer. DOL must recalculate the unemployment tax rate for both employers and the recalculated rates are effective on the date of the transfer.

The bill applies to individuals, corporations, limited liability companies, companies, trusts, estates, partnerships, or associations.

DOL'S AUTHORITY

The bill requires DOL to, at a minimum, consider the following when determining whether an employer acquired another employer's assets, organization, employees, or business solely or primarily to lower his unemployment taxes:

1. the cost of acquiring the business,
2. whether the new owner continued the business activity of the acquired business and for how long, and
3. whether the new owner hired a substantial number of new employees to perform duties unrelated to the business activity conducted by the business prior to its acquisition.

To enforce any provision of the bill, DOL may require any employer, whether or not it is subject to the provisions of unemployment

compensation law, to provide any necessary sworn or unsworn reports.

PENALTIES

Under the bill, any person or business that (1) knowingly violates, attempts to violate, or knowingly advises another to violate the ban against buying another company to obtain a lower tax rate or (2) transfers employees between two companies under the same ownership or control and fails to provide the requested reports necessary to enable the administrator to recalculate each company's experience rating is subject to penalties. They are:

1. a fine of not more than \$2,000, imprisonment for up to one year, or both and
2. for (a) an employer, a penalty tax rate of an additional 2% of taxable wages for the year of the violation and the next three years, and (b) a non-employer, a fine of \$500 to \$5,000.

All fines will be deposited in the Employment Security Special Administration Fund.

The bill requires that in cases where one person or business acquired another to obtain a lower tax rate, DOL will charge the employer the greater of the new employer tax rate (for employers without enough experience to have their rate based on experience) or the employers' rate based on its actual unemployment experience.

The bill applies its penalties to violations of existing law regarding the determination of an employer's unemployment tax rate such as the provision authorizing DOL to mingle the experience ratings of two employers when one holds at least 80% controlling interest in the other.

CONFORMITY WITH FEDERAL LAW

The bill states it must be interpreted to comply with the federal law (P.L. 108-295, known as the SUTA Dumping Prevention Act of 2004) requiring state unemployment compensation laws to prohibit merger, acquisition, restructuring, or workforce shifting that is intended to avoid unemployment taxes. This law requires states to prohibit SUTA

(state unemployment tax acts) “dumping” as a condition for receiving federal unemployment administrative grants. The federal law specifically requires states to impose penalties for those who knowingly violate or attempt to violate the state law.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 11 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 47 Nay 0